

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:

RICHARD M. OSBORNE,

Debtor.

Case No. 17-17361-aih

Chapter 11

Judge Arthur I. Harris

**FIRST NATIONAL BANK OF PENNSYLVANIA'S OBJECTION
TO DEBTOR'S CLAIM OF HOMESTEAD EXEMPTION**

First National Bank of Pennsylvania (“**FNB**”), successor by merger to Park View Federal Savings Bank (“**Park View**”), by and through its undersigned counsel, hereby objects to the debtor Richard M. Osborne’s (“**Debtor**”) claimed homestead exemption. In support thereof, FNB states as follows:

1. On January 17, 2018, Debtor filed certain of his schedules including Schedule C [dkt. # 29]. Debtor’s Schedule C claims an exemption to the real property and improvements located at 7020 Williams Road, Concord Township, Ohio (the “**Property**”) pursuant to Ohio Revised Code § 2329.66(A)(1).

2. On April 9, 2018, Debtor filed a Motion seeking to sell the Property free of any interest of any entity other than the estate (the “**Sale Motion**”).

3. In the Sale Motion, while proposing to sell the Property to his granddaughter, Debtor claims that it is his intention to use the Property as his primary residence at some point in the future. Specifically, the Sale Motion states, “Buyer is the Debtor’s granddaughter but seeks to purchase [the Property] in good

faith. The Debtor expects to eventually use [the Property] as his primary residence." (Emphasis added).

4. Ohio Revised Code § 2329.66(A)(1)(a) states, in pertinent part, that "[e]very person who is domiciled in this state may hold property exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order ... (1)(a) ... one parcel or item of real or personal property that the person or a dependent of the person uses as a residence"

5. Under Ohio law, a debtor must use or possess real property as a residence before claiming a homestead exemption therein. *In re Breece* (6th Cir. BAP (Ohio), null, 01-18-2013) No. 12-8018, 487 B.R. 599, 2013 WL 197399, Unreported. See also, *Cactus Capital Co v Mekong Market, Inc.*, No. 96APE08-1031, 1997 WL 170300 (10th Dist. Ct App, Franklin, 4-10-97) (right to exemption under not proven where evidence was lacking that the owner used the premises as a residence).

6. Debtor cannot claim the Ohio homestead exemption in the Property as there is no evidence that he uses the Property as his residence. Accordingly, FNB objects to the Debtor's claimed homestead exemption.

WHEREFORE, for the reasons stated herein, First National Bank of Pennsylvania, successor-by-merger to Parkview Federal Savings Bank, objects to the debtor Richard M. Osborne's claimed homestead exemption.

Dated: August 10, 2018

Respectfully submitted,

/s/ Nathaniel R. Sinn

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CERTIFICATE OF SERVICE

The undersigned certifies that on August 10, 2018, a true and correct copy of the foregoing was served via the Court's electronic case filing system on the following who are listed on the Court's Electronic Mail Notice List:

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